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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Roger A. Allington

Application No.: 09/187,472

Filed: November 6, 1998

For: ROASTING SYSTEM

Customer No.: 20350

Confirmation No. 3109

Examiner: Becker, Drew E.

Technology Center/Art Unit: 1761

PETITION TO REVIVECommissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby petition to revive the present application under 37 CFR §1.137(b). It is respectfully submitted that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR §1.137(b) was unintentional. Following is a brief statement of facts concerning the delay.

On April 19, 2002, an office action was mailed for the present application. All the claims were rejected and the action was made final. On August 19, 2002, applicants filed a Notice of Appeal and paid the appropriate one month extension of time fee. Thus, a response in the form of either an appeal brief or a request for continued examination was due on or about October 19, 2003.

On January 6, 2003, a letter from J. Georg Seka of Townsend and Townsend and Crew, applicants' patent attorney for the present application, was sent to Roger A. Allington, one of the inventors of the present application, via facsimile and mail. The letter outlined the options for proceeding with prosecution of the present application and the estimated cost. The letter also asks for advance payment before proceeding with the necessary work. In subsequent phone conversations between Mr. Seka and Mr. Allington, it was apparent that applicants, as well as the

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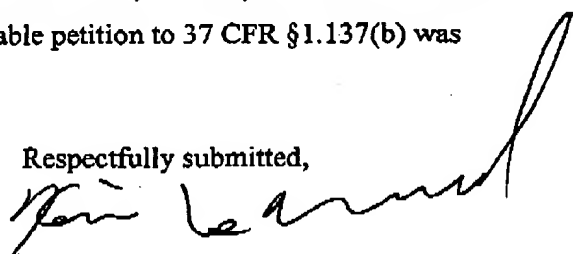
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original assignee of the present application, Fresh Roast Systems, Inc., did not have any money for pursuing the present application at that time. Indeed, Fresh Roast Systems, Inc. filed for Bankruptcy shortly thereafter.

On May 19, 2001 Perkins and Associates obtained a secured interest in the intellectual property of Fresh Roast Systems, Inc.. On November 13, 2003, the Bankruptcy Court handling the bankruptcy of Fresh Roast Systems, Inc. granted Perkins and Associates relief from the automatic stay and ordered that Perkins and Associates, as the secured creditor, may foreclose their security interest, take possession of the collateral, and dispose of it in any manner permitted by State or Federal Law. Accordingly, on December 12, 2003, Fresh Roast Systems, Inc., as the previous Assignee of the present application, assigned the present application to Perkins and Associates. This Assignment was recorded by the U.S.P.T.O. on January 9, 2004.

Accordingly, as evidenced by the above facts, the present application was unintentionally abandoned. Accordingly, it is respectfully requested that this petition for revival pursuant to 37 CFR §1.137(b) be granted since the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition to 37 CFR §1.137(b) was unintentional.

Respectfully submitted,



Kevin T. LeMond
Reg. No. 35,933

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Attachments
KTL:lo
60137777 v1

PTO/SB/64 (11-03)

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**
Docket Number (Optional)
 017990-000110

First named inventor: Roger A. Allington

Application No.: 09/187,472

Art Unit: 1761

Filed: November 6, 1998

Examiner: Becker, Drew E.

Title: ROASTING SYSTEM

 Attention: Office of Petitions
 Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450
 FAX: (703) 872-9306

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or Issue fee;
- (3) Terminal disclaimer with disclaimer fee -- required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

- ☒ Small entity - fee \$665 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.
☐ Other than small entity - fee \$ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of Amendment (identify type of reply):

- ☐ has been filed previously on _____.
☒ is enclosed herewith.

B. The issue fee of \$ _____

- ☐ has been paid previously on _____.
☐ is enclosed herewith.

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3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$_____ for a small entity or \$_____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. **STATEMENT:** The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (II)(C) and (D))].

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

2/11/04

Date

Kevin T. LeMond

Signature

Telephone
Number: (415) 576-0200

Kevin T. LeMond

Typed or printed name

Townsend and Townsend and Crew LLP

Two Embarcadero Center, 8th Floor, San Francisco, CA
Address

Enclosures: ☒ Fee Payment☒ Reply☐ Terminal Disclaimer Form☒ Additional sheets containing statements establishing unintentional delay☒ Other RCE _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☒ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

2/11/04

Date

Lata Olivier

Signature

Lata Olivier

Typed or printed name of person signing certificate

03/04/2004 DEPOSITED 000001 201430 09187472

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